



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
701 S. COURTHOUSE ROAD, SUITE 1001
ARLINGTON, VA 22204-2490

[REDACTED]
Docket No. 6822-21
Ref: Signature Date

From: Chairman, Board for Correction of Naval Records
To: Secretary of the Navy

Subj: REVIEW OF NAVAL RECORD ICO FORMER [REDACTED]
XXX XX [REDACTED] USMC

Ref: (a) Title 10 U.S.C. 1552

Encl: (1) DD Form 149 w/attachments
(2) Advisory Opinion, 19 Nov 2021
(3) Advisory Opinion, 24 Oct 2022

1. Pursuant to the provisions of reference (a), Subject, hereinafter referred to as Petitioner, filed enclosure (1) with the Board for Correction of Naval Records (Board), requesting that his naval record be corrected by changing his narrative reason for separation from condition, not a disability, to medical/disability retirement.

2. The Board, consisting of [REDACTED], [REDACTED], and [REDACTED] reviewed Petitioner's allegations of error and injustice on 31 October 2022 and, pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, relevant portions of naval records, and applicable statutes, regulations, and policies. The Board also reviewed enclosures (2) and (3), consisting of advisory opinions (AOs) from a psychologist and from a psychiatrist, respectively.

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice, finds as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.

b. Petitioner enlisted in the Marine Corps and commenced a period of active duty on 25 April 1995. In 2003, the Petitioner deployed to Iraq. During his deployment, he was shot by an enemy sniper in his upper left extremity and was medically evacuated to Camp Pendleton. During his deployment, he also witnessed traumatic incidents associated with warfare. Upon his return from deployment, the Petitioner exhibited signs of post-traumatic stress disorder (PTSD), for which he commenced treatment. He was reviewed by a psychiatric medical evaluation board (MEB), which issued a report on 16 April 2004. According to the psychiatric MEB:

[Petitioner is] suffering from posttraumatic stress disorder and depressive disorder not otherwise specified, conditions that did not exist prior to his enlistment but

Subj: REVIEW OF NAVAL RECORD ICO FORMER [REDACTED]
XXX XX [REDACTED] USMC

resulted from his direct combat experiences including gunshot wound to the left arm in Iraq. He will require psychotherapy and pharmacotherapy to provide a suitable transition to civilian life. His symptoms have not yet been alleviated with treatment. If maintained on active duty, he will not be fully fit for duty, i.e., deployment, and his psychiatric conditions could worsen.

c. Thereafter, the Petitioner was reviewed by another MEB, which assessed his physical condition, describing Petitioner's open reduction and internal fixation surgery, and further describing his course of treatment and recovery from his physical wounds.

d. Based on his MEBs, the Petitioner was referred to the Physical Evaluation Board (PEB). As part of the disability evaluation process, the Petitioner's commanding officer provided a non-medical assessment (NMA) addressing the Petitioner's occupational fitness for service. According to the NMA, dated 9 July 2004, the Petitioner the Petitioner's commanding officer was surprised that the Petitioner was pending a PEB, and he further stated that the Petitioner was an excellent Marine who only needed time for his arm to recover, and that the Petitioner should continue his treatment for his PTSD. The commanding officer explained further that the Petitioner had combat experience, which the Marine Corps did not want to lose. The PEB convened and, on 30 September 2004, found the Petitioner fit for duty.

e. On 27 January 2005, the Petitioner received a formal written warning (Page 11) stating that the Petitioner's diagnosis of PTSD and depression have interfered with his performance of duty, and admonishing him that corrective action was available in the form of continuing mental health treatment. On 8 February 2005, the Petitioner received another Page 11, warning him that he had recently missed work, was absent without authority, and was drinking alcohol while using prescription drugs.

f. On 22 March 2005, the Petitioner was reviewed by the Mental Health Unit of the Naval Medical Center, [REDACTED]. According to this review:

administrative separation is recommended on the following grounds. The service member is not considered to be mentally ill, that is, without a medically boardable condition. However, he has psychiatric symptoms related to his combat experience that are of such severity as to render him unsuitable for continued military service in the USMC. Continued psychiatric treatment may be of limited benefit. Although he denies current suicidal ideation or intent, this individual is judged to be a significant risk to self or others if retained on active duty. He is deemed fit to return to duty for immediate processing for administrative separation.

g. On 11 April 2005, the Petitioner was notified of the initiation of administrative separation processing. On 20 April 2005, the Director, Naval Expeditionary Warfare Training, recommended the Petitioner be discharged, as follows:

[Petitioner] has undergone a personality change during his most recent years of military service. Whether this change is a result of some diagnosed mental

Subj: REVIEW OF NAVAL RECORD ICO FORMER [REDACTED]
XXX XX [REDACTED] USMC

condition or merely a lack of maturity and personal growth is uncertain. However, what is clear is that despite professional medical intervention, [Petitioner] has not successfully lived up to his potential as a Marine SNCO and has expressed no desire to do so.

h. On 29 April 2005, Petitioner's commanding officer recommended his discharge. According to the commanding officer, "based on his lack of treatment progress over an extended period of time, it is unlikely that he will be psychologically fit for deployment and/or field operations in the foreseeable future, and it is likely that he may never again be psychologically fit for full duty." Thereafter, the lawyer for the separation authority found the discharge materials to be appropriate and he recommended the Petitioner be discharged.

i. The Petitioner was discharged, on 16 June 2005, due to a condition, not a disability. As reflected on his Certificate of Discharge or Release from Active Duty (DD Form 214), during his service, the Petitioner received personal and unit awards to include the Purple Heart, Combat Action Ribbon with one star (for combat action in Kosovo and Iraq), Navy Unit Commendation, Navy Meritorious Unit Commendation, Presidential Unit Citation, Meritorious Mast, Navy and Marine Corps Achievement Medal, Good Conduct Medal, Sea Service Deployment Ribbon, Global War on Terrorism Service and Expeditionary Medals, Marine Corps Expeditionary Medal (Arabian Gulf), Armed Forces Expeditionary Medal, Humanitarian Service Medal, and the National Defense Service Medal. Additionally, he earned his Rifle Expert Badge (two Awards) and Pistol Marksmanship Badge.

j. In his petition to this Board, Petitioner requests that his narrative reason for discharge be changed from condition, not a disability, to a disability retirement. In support of his request, the Petitioner asserts there was error or injustice in his discharge, in that he should have been found unfit and awarded a disability retirement.

k. To assist it in reviewing the Petitioner's petition, the Board reviewed the enclosures (2) and (3) AOs. Both AOs were considered favorable to the Petitioner. The enclosure (2) AO was directed toward a review of Petitioner's discharge, and did not address the Petitioner's physical disability. Nevertheless, the enclosure (2) AO concluded that the Petitioner "exhibited behaviors associated with a mental health condition during his military service and his narrative for separation should be changed."

l. The enclosure (3) AO addressed the Petitioner's request from a physical disability perspective. That AO reviewed the medical treatment background of Petitioner's injuries as well as his review by the MEBs and the PEB. The AO also reviewed the statements of the Petitioner's commanding officer in his NMA. According to the AO:

His Commander's Non-Medical Assessment (NMA) recommending against medical discharge appeared to have been influential in the PEB decision though it went against the clinical history, diagnoses, and recommendations contained in the MEB in which the treating providers, with almost a year working with the Petitioner, had found him unable to perform his military duties commensurate with his rank and rating and recommended medical discharge. Given the lengths

Subj: REVIEW OF NAVAL RECORD ICO FORMER [REDACTED]
XXX XX [REDACTED] USMC

petitioner had gone to appear occupationally functional, which he admitted to the command and his providers was not a true indication of his ongoing mental health impairments, the true extent of his occupational and social impairment appear to have been unknown to his chain of command. His Commander's seemingly well-intentioned recommendation for continued service to allow more time for healing of his gunshot wound injuries and treatment of his PTSD and Depression without the 'complications' of his gunshot wound, proved to be against the best interests of the Petitioner and may have been influenced by the Commander's hesitance to lose a 'combat experienced Marine' who superficially appeared to be able to perform his duties.

The AO also reviewed the comments of the Petitioner's chain of command in connection with his discharge processing. As to those comments, the AO found that "[a]ll these statements from Petitioner's chain of command are consistent with psychological symptoms and behaviors seen in both PTSD and Depressive Disorder (NOS) and further support Petitioner's inability to execute the duties and responsibilities expected of his rate, rank, and existence of mental health conditions that rendered him unfit for continued military service." The AO determined that:

Had the PEB found him unfit, the range of symptoms and degree of social and occupational impairment would likely have met Veterans Administration Schedule for Rating Disabilities (VASRD) criteria for a 50% disability rating as evidenced by 'occupational and social impairment with reduced reliability and productivity due to such symptoms as flattened affect, impairment of short- and long-term memory, impaired judgment, disturbances of motivation and mood, difficulty in establishing and maintaining effective work and social relationships, depressed mood, anxiety, impaired concentration, and chronic sleep impairment.'

The AO concluded, "in my medical opinion, the preponderance of objective clinical and non-clinical evidence provides sufficient support for Petitioner's contention that at the time of his discharge he was unfit for continued military service and should have been medically retired. Had he been medically retired, the range of psychiatric symptoms and behavioral impairments most closely approximate a 50% disability rating per the VASRD."

CONCLUSION

Upon review and consideration of all the evidence of record, the Board finds the existence of an injustice warranting relief. Specifically, the Board determined that the interests of justice supports changing Petitioner's narrative reason for separation and separation code to reflect Permanent Disability, with a rating of 50%, as described by the AO, effective the date of his discharge, with appropriate back pay as determined by the Defense Finance and Accounting Service (DFAS).

In reaching its decision, the Board concurred with the findings of the AOs, and in particular, the enclosure (3) AO. As evident from the record, and as noted in the AO, the Petitioner's treating providers who worked with the Petitioner for approximately a year reported to the MEB that the Petitioner was occupationally impaired due to his injuries that incurred in, or as a result of, his

Subj: REVIEW OF NAVAL RECORD ICO FORMER [REDACTED]
XXX XX [REDACTED] USMC

combat experience. The Board empathized with the Petitioner's commanding officer in seeking to retain a skilled and effective Marine with combat experience in two theaters. In hindsight, based on the contemporaneous medical evidence, it seems predictable that the Petitioner failed to thrive after his retention by the PEB, due to his serious mental health conditions incurred as a result of his combat experience. Thus, the Board agreed with the AO, who recognized that the PEB appeared to be swayed by the NMA, despite the medical evidence to the contrary.

RECOMMENDATION

In view of the above, the Board directs the following corrective action.

Petitioner's naval record be corrected by adding the Petitioner to the Permanent Disability Retired List (PDRL) at 50% rating based on his conditions of PTSD and Depressive Disorder (NOS);

Issuing Petitioner a new DD Form 214 reflecting that at the time of his discharge, his narrative reason for separation to Disability – Permanent (Combat Related) and his SPD code was "SFJ1."

The DFAS shall conduct an audit of the Petitioner's pay records and shall pay all monies lawfully found to be due as a result of the above correction to Subject's naval record.

And no other changes.

4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

5. Pursuant to the delegation of authority set out in Section 6(e) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulation, Section 723.6(e)) and having assured compliance with its provisions, it is hereby announced that the foregoing corrective action, taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.

11/17/2022

[REDACTED]

Deputy Director

Signed by: [REDACTED]